



Internal Revenue Service
Department of the Treasury
Mid-Atlantic Region (TE/GE)

Date: AUG 24 2000

Person to Contact: [REDACTED]

Contact Telephone Number: [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFIED MAIL

Dear Sir or Madam

We have considered the information submitted in support of your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code and have determined you do not qualify under this section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that [REDACTED] was incorporated under [REDACTED]

Your Articles of Incorporation state that the specific purposes for which the corporation is organized are: to aid and assist churches and non-profit inter-denominational organizations in obtaining loans and/or lease commitments; to provide financial consultation and prepare and present loan packages; to set up church accounting systems and locate loan and lease funding sources; and to represent the church and/or non-profit inter-denominational organization(s) to the lender.

Your organization was organized for the purpose of aiding and assisting churches and non-profit organizations in obtaining loans or lease commitments. The activities consist of offering knowledge and expertise in the area of securing a loan, what's the best way to go, and how to go about growing their ministry. The organization helps in the preparation process, sitting down and consulting with the leaders of the Church to get an understanding of the vision. Help is offered by gathering the required paper work and writing up what is requested. If the church is not educated in the requirements of bookkeeping or obtaining the past three years of financial data for securing the loan, the organization will help set up the management software for the loan package to be provided to the lending institution.

[REDACTED]

[REDACTED]

Your mission is to educate, train and develop the leaders in the church in the loan process by showing them what will be expected; what the lending institution is looking for; how much they can realistically borrow in terms of debt ratio; and preparing the members for transition and what will be expected of them. The organization charges a flat fee of \$[REDACTED] for packaging the loan and [REDACTED]% of the loan amount is charged for a finder's fee. The organization anticipates conducting future activities by offering gospel concerts and conferences for a fee and pre-qualification and consultation seminars free of charge.

[REDACTED] states that it provides a service to Christian organizations with the most comprehensive association of lenders who can provide alternative financing methods necessary for an organization within 24 hours of request. [REDACTED] arranges all types of religion related real estate financing and leasing. It arranges help in the financing requirements for a new building, refinancing, an expansion, an addition, church camp or retreat. It leases everything from portable classrooms and other modular buildings to vehicles, furniture for daycare centers and kindergarten facilities.

[REDACTED] offers a website, [REDACTED] that provides a place to shop, sell, apply for a loan and be encouraged by the Word of God. The website features [REDACTED] and [REDACTED]. The organization receives a [REDACTED]% commission off everything sold in the store. [REDACTED] will also assist ministries in getting started or incorporating in any one of the 50 states and will prepare 501(c)(3) packages upon request.

Income is from finders fees, packaging fees, donations, conference admission and registration fees, and gospel concerts admission fees.

Expenditures are for salaries, advertising and equipment, occupancy, health insurance, and donations.

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Organizations which seek exemption from Federal income tax as described in section 501(c)(3) must be organized and operated exclusively for one of the purposes set forth therein. If more than an insubstantial part of its activity is not in furtherance of section 501(c)(3) purposes, it will not be exempt.

Regulations 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 513(a) defines an unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise or performance by such organization, of its purpose or function constituting the basis for its exemption.

Sections 513(a)(1), (2), and (3) are exceptions which indicate what is not considered a trade or business. They state, in relevant part, "...the term does not include any trade or business—(1) in which substantially all the work ... is performed... without compensation; or (2) which is carried on, ... primarily for the convenience of its members, students, patients, officers, or employees, or, ... (3) which is the selling of merchandise, substantially all of which has been received... as gifts or contributions."

In Revenue Rulings 72-369, 1972-1, CB 124 and 77-4, 1977-1, CB 141 it appears that when a business activity is considered to be the exempt activity, the Government looks for the organization to operate in a manner not consistent with a for profit entity. The organization described in Rev. Rul. 72-369 sold its managerial and consulting services at cost to unrelated exempt organizations. Because the fees were at cost and not below cost, the Ruling concluded the entity did not qualify to be exempt under section 501(c)(3). The same conclusion was reached in Rev. Rul. 77-4. In each case, the organizations described were not operated in a manner distinguishable from an ordinary commercial entity and therefore were not exempt.

In United Missionary Aviation, Inc., V. Commissioner, T.C. Memo 1990-566. The court found that the Petitioner was engaged in a trade or business in the marketing of religious audio tapes and audio equipment. The Petitioner also sold secular audio tapes. Based on the facts and circumstances, as set forth below, the court concluded that the Petitioner was not exempt.

The Court considered the following factors:

1. The manner in which the petitioner conducted its activities.
2. Competition with commercial firms.
3. Whether Petitioner provided its materials at cost or below cost.
4. Whether there were substantial profits.

The Court concluded (Boldface = statements of the Court)

1. **"The Petitioner's tape and equipment supply division was operated in the same manner as that of any profitable commercial enterprise."** In the instant case, [REDACTED] operates similar to a for-profit commercial business. You advertise, have regular hours, and the incorporators, who are also related, receive a salary consistent with a commercial business.
2. **"The majority of equipment and blank tapes offered by petitioner were also offered by other commercial firms."** This is also true of [REDACTED]. Its services of assisting Christian organizations in obtaining loans and/or lease commitments, providing financial consultation, and preparing and presenting loan packages is similar to that of a banking institution or a real estate company. The organization also charges a flat fee of \$[REDACTED] and a finder's fee of [REDACTED]% of the loan.
3. **"Petitioner priced its merchandise approximately 20 percent above cost."** In the instant case, [REDACTED] indicates that its fees are below the prices charged by commercial entities. However, the selling of merchandise or offering of services at a discount is not, and of itself, a charitable deed.

4. "Substantial profits, while not determinative, also indicate an organization's primary purpose is commercial in nature....Petitioner had net profits of \$97,582... During the 1974 to 1975 period, petitioner's net worth increased from \$50,939 to \$321,958." In the instant case, [REDACTED] proposes to receive net profits of \$[REDACTED] in [REDACTED] and \$[REDACTED] in [REDACTED], respectively. However, as the court indicated, profits are not determinative of a commercial purpose, if the organization should incur losses, they also will not be determinative of exempt purposes.

It is concluded, that your activities are similar to those in the court case. Your consulting services and loan processing activities are similar to a commercial enterprise and the fact that you service the Christian community at fees below those charged by commercial enterprises is not, in itself a charitable or tax exempt purpose. In addition, the organization also pays salaries to related Board members commensurate with those paid by commercial enterprises.

While some of your activities are educational, your primary purpose is to provide consulting and financing services in a manner similar and analogous to that of a commercial enterprise.

Moreover, it has been held that the presence of a single non-charitable or non-educational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number of truly charitable or educational purposes. *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945) CT.d 1650 CB 1945, 375.

Therefore, since you do not meet the operational test of section 501(c)(3) we have concluded that you do not qualify for exemption under this section. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law and any other information to support your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient district office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered as a failure to exhaust available administrative remedies. Section 7426(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

Appeals submitted which do not contain all of the information required by Publication 892 will be returned for completion. If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Steven T. Miller

Steven T. Miller
Director, Exempt Organizations

Enclosures: Publication 892

Cc: [REDACTED]